FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

M. C. A. No. 588/2007 (Review)
in S. A. No. 437/2006 (Decided)

Dayaram s/o Mahadeo Sadavarte and another
..V/s..
Smt. Bhagirathibai Laxman Futane and others

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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CORAM:- **Smt. Vasanti A. Naik, J.**
DATE:- 18th June, 2007.

Heard Mr. R. K. Deshpande, Advocate for the applicants.

Though, both the Courts had recorded that Mahadev's ancestor was the ow2ner of the property, this Court had, in the order dated 24.01.2007, observed that the trial as well as the appellate Court had held that the suit property was self acquired property of Mahadev.

According to the learned counsel for the applicants, in case, the suit property was the ancestral property of Mahadev, the non applicants would not have any right or claim over the said property as the respondents were married prior to 1994. It is submitted on behalf of the applicants that

though in view of the amended provisions of Section 29-A of the *Hindu Succession Act, 1956*, a daughter had equal right in coparcenary property, the provisions of amended Section 29-A do not apply to the daughter married before the date of commencement of *Hindu Succession (Maharashtra Amendment) Act, 1994*. It is submitted on behalf of the applicants that in the instant case a categorical finding has been recorded by the Courts that the respondents were married before the year 1994. According to the learned counsel for the applicants, in view of the provisions of Section 29(A)(iv), the respondents may not be entitled to have a share in the ancestral property of Mahadev.

The submissions made on behalf of the applicants appear to be acceptable. Hence, M. C. A. No. 588/2007 is allowed. The order passed by this Court on 24.01.2007 is hereby set aside. The second appeal is hereby taken up for admission.

Heard leaned counsel for the appellants. The Second Appeal is **ADMITTED** on the following substantial question of law.

Whether the Courts were justified in decreeing the suit of the plaintiffs/respondents after holding that the suit property was ancestral property of Mahadev, specially when

the provisions of Section 29-A (iv) did not give right to a daughter in coparcenary property when the daughter was married prior to the coming into force of the Hindu Succession (Maharashtra Amendment) Act, 1994?

Civil Application No. 4606/2006

Heard.

Issue notice to the respondents returnable after four weeks.

Since, the second appeal is admitted on the substantial question of law, the judgments and decree passed by the trial Court and the appellate Court are stayed till the returnable date.

JUDGE

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